

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 13, 2019

SEAN F. McAVOY, CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

DENNIS MICHAEL HOGAN,

Defendant.

No. 2:18-CR-00058-RMP-1

ORDER ON MOTION TO MODIFY
CONDITIONS OF RELEASE

MOTION DENIED
(ECF No. 42)

At Defendant's February 12, 2019, hearing on Motion to Modify Conditions of Release, Defendant was present, out of custody, with Attorney Bevan Maxey. Assistant U.S. Attorney David M. Herzog appeared for the United States. Both sides presented argument. Defendant's witness Kevin Peden testified telephonically.

The Court has reviewed Defendant's Motion to Modify Conditions of Release, **ECF No. 42**, including the Declaration of Mr. Peden, the United States' response, **ECF No. 44**, the statements of expert witness Kevin Peden made in open court, and the argument of counsel.

As a threshold matter, Defendant must proffer information not previously available to Defendant or his counsel, which materially affects a prior determination by the Court. 18 U.S.C. 3142(f)(2)(B) *et. seq.* Defendant argues that identification and availability of the "Teramind" software to remotely monitor and, somewhat block, the internet activity of a given computer is newly available information material to release conditions previously imposed by this Court.

Defendant further urges the Court to consider that his limited access to the internet is essential to his business and livelihood, and that under the present

1 conditions of pretrial release his business relies on his brother's computer prowess,
2 which has been less than desired.

3 The United States argued that Teramind functions similarly to the "Covenant
4 Eyes" presently utilized by the United States Probation to monitor the computer
5 use of people it supervises, and previously rejected by this court as inadequate for
6 this case, **ECF No. 30**. Both programs can record websites visited by the
7 monitored computer. While both programs have a limited ability to prevent access
8 to specific websites, as well as websites associated with specific words or phrases,
9 it is not possible to identify all problematic websites, or all words or phrases or
10 slang terms that will eliminate access to a constantly changing array of problematic
11 websites. Accordingly, the **Court finds** that Defendant has not proffered new
12 information material to release conditions.

13 Further, in a case where there is probable cause that Defendant has produced
14 child pornography by using the internet to entice minors in the Philippines to
15 provide sexually explicit photographs as a predicate to in-person meetings, and
16 Defendant is somewhat adept at using the computer and the internet, and
17 Defendant asks for access to the internet to do business in, *inter alia*, the
18 Philippines, Court finds that the proposed change in release conditions would not
19 reasonably assure the safety of the community or the appearance of defendant for
20 further proceedings.

21 Therefore, **IT IS ORDERED**, Defendant's Motion to Modify Conditions of
22 Release, **ECF No. 42**, is **DENIED**.

23 **IT IS SO ORDERED.**

24 DATED February 13, 2019.



A handwritten signature in black ink, appearing to be "M" or "Rodgers", written over a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE